IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 528 of 1981

with

FIRST APPEAL No 529 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHETH CHIMANLAL BHAICHAND & CO

Versus

SARDAR VALLABHBHAI PATEL SUGARINDUSTRIES COOP SOC LTD

Appearance:

1. First Appeal No. 528 of 1981
   MR SURESH M SHAH for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1
2. First Appeal No. 529 of 1981
   MR SURESH M SHAH for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 01/04/2004

COMMON ORAL JUDGEMENT

These two appeals by the original defendant are directed against the common judgment dated 16.2.1981 passed by the ld. Civil Judge (SD), Gondal in Special Civil Suits No. 1/1975 and 2/1975, whereby the ld. judge decreed the suits partly in favour of the respondent-plaintiff.

First Appeal No. 528/1981 is filed by the ori. defendant in Special Civil Suit No. 1/1975, while First Appeal No. 529/1981 is filed by the ori. defendant in Special Civil Suit No. 1/1975.

The respondent-plaintiff is a cooperative society registered under the provisions of Gujarat Cooperative Societies Act, which is carrying on the business of Sugar. The plaintiff's case in Special Civil Suit No. 1/1975 was that, on 4.9.1974, there was an auction for the sale of Sugar by the plaintiff society and the bid offered by the defendant at Rs. 600/- per bag was the highest and so it was accepted. On that day, the memo of Soda between the parties was also made. The defendant, thus, purchased 180 bags of Sugar at the rate of Rs. 600/- per bag and he was required to take the delivery before 28.9.1974. The defendant had also paid Rs. 12000/- towards the price. However, after the reduction of the rate, the defendant failed to take delivery by paying the remaining price of the goods. On 26.9.1974, the plaintiff informed the defendant by telegram to take the delivery. They also requested the defendant on telephone to take the delivery. However, defendant failed to take delivery as per the terms of the contract. On 12.10.1974, the plaintiff gave a notice to the defendant but he did not take delivery. On 17.10.1974, the defendant was given another telegram intimating that there would be re-auction of the Sugar on 20.10.1974 at 3.00P.M. at the risk and cost of the defendant and he would be liable to pay the damages. The defendant did not give any reply nor did he remained present at the auction. On re-auction, the Sugar was sold at the rate of Rs. 435/- per bag. The plaintiff, therefore, filed Special Civil Suit No. 1/1975 against the defendant claiming the decree for Rs. 19,727/- with running interest at the rate of 15%.

In Special Civil Suit No. 2/1975 also the facts were similar and the plaintiff prayed for a decree of Rs. 21,783/-.

The defendant in Special Civil Suit No. 1/1975 contended in his written statement that the plaintiff was not a registered society, that there was no term about the time limit for making payment in the Soda dated 4.9.1974, that he had no objection to take the delivery before 28.9.1974, but the employees of the Society did not intend to give delivery to him, that the plaintiff had no right to re-auction the goods on 20.10.1974, that the auction held on 20.10.1974 was not legal because the formalities were not entered into, that the plaintiff had not given reasonable time to him for taking the delivery of Sugar and, that even if it was held that he had committed breach of contract, the rate of Sugar prevailing in market on that date must be taken into account.

The defendant in Special Civil Suit No. 2/1975 raised the same contentions as raised by the defendant in Special Civil Suit No. 1/1975.

The ld. trial judge framed the following issues:

1. Whether the plaintiff proves that the defendant has committed breach of contract?

2. Whether the plaintiff has suffered damages of Rs. 19727/- in Spl. C.S. No. 1/75 and Rs. 21783/- in Sp. C.S. No. 2/75?

3. Whether the defendant proves that contract of sale of Sugar is illegal?

4. Whether the defendant proves that this Court has no jurisdiction?

5. Whether the plaintiff cooperative society is duly registered?

After recording the evidence adduced by the parties, the ld. trial judge recorded the following findings:

1. In the affirmative.

2. The plaintiff has suffered damages of Rs. 17430/- in Special C.S.No. 1/75 and Rs. 19860/- in Sp. C.S. No. 2/75.

3. In the negative.

4. In the negative.

5. In the affirmative.

In view of the said findings, the ld. trial judge decreed the suits partly in favour of the respondent, as stated earlier.

I have gone through the judgment and evidence on record. It is clear that the bid of the defendant was accepted since it was the highest. It is also on record that the defendant did not take delivery of the goods though notice was given to him. Telegram also was sent to the defendant asking him to lift the Sugar at the earliest failing which there would be re-sale of auction on 20.10.74 at 3.00P.M. and the defendant was told that he would be liable for damages as per the terms of the agreement. The ld. trial judge has discussed the evidence in detail in para-8 and 9 of the judgment. I see no reason to defer from his evaluation of the evidence and the assessment of damages made by him. The findings recorded by him are not shown to be erroneous in any way. In the circumstances, the ld. trial judge has rightly decreed the suits in favour of the respondent-plaintiff and, there is no warrant for interfering with the same.

Thus, there is no substance in the appeals and they are dismissed.

(M.C. PATEL, J.)
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